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**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND DIVISION**

1 MARY KUNTZ, as Successor-in-Interest to and ) No. 4:21-cv-06935-JSW  
2 as Wrongful Death Heir of WILLIAM KUNTZ, )  
3 Deceased; and ANNIE GRAYE, JENNIE ) JOINT CASE MANAGEMENT  
4 MARTIN and SARAH THORNTON, as ) STATEMENT & [PROPOSED] ORDER  
5 Wrongful Death Heirs of WILLIAM KUNTZ, )  
6 Deceased,  
7 Plaintiffs, ) Date: January 7, 2022  
vs. ) Time: 11:00 am  
8 A.W. CHESTERTON COMPANY, et al., ) Judge: Honorable Jeffrey S. White  
Defendants. ) Courtroom: 5-2<sup>nd</sup> Floor

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20 The parties to the above-entitled action jointly submit this JOINT CASE  
21 MANAGEMENT STATEMENT & PROPOSED ORDER pursuant to the Standing Order for All  
22 Judges of the Northern District of California dated November 1, 2018, and Civil Local Rule  
23 16- 9.

24       1. **Jurisdiction and Service:** MARY KUNTZ, ANNIE GRAYE, JENNIE MARTIN  
25 and SARAH THORNTON (hereinafter “plaintiffs”) filed claims against A.W. CHESTERTON  
26 COMPANY, CRANE CO., SANTA FE BRAUN, INC. AS SUCCESSOR IN INTEREST TO

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1 C.F. BRAUN, INC.;<sup>1</sup> PAXTON PRODUCTS CORPORATION;<sup>2</sup> and THE J.R. CLARKSON  
 2 COMPANY LLC; in San Francisco Superior Court. On September 9, 2021, defendant THE J.R.  
 3 CLARKSON COMPANY LLC (hereinafter “J.R. CLARKSON” or “defendant”) removed the  
 4 case to the Northern District of California pursuant to 28 U.S.C. §§ 1442(a)(1) and 446. J.R.  
 5 CLARKSON is the only defendant remaining in the case. No issues exist regarding personal  
 6 jurisdiction or venue.

7       2. **Facts:** Plaintiffs filed their complaint on June 30, 2021. Plaintiffs allege that  
 8 decedent WILLIAM KUNTZ (“decedent”), was exposed to asbestos attributable to the defendant  
 9 and others while working aboard ships and at shipyards while serving in the U.S. Navy.  
 10 Plaintiffs further allege that this exposure caused decedent’s mesothelioma and resulting,  
 11 premature death.

12       Defendant denies it is legally responsible for any alleged exposures to asbestos-  
 13 containing materials. Defendant disputes that decedent had an asbestos-related disease or that it  
 14 contributed to his death. Defendant also asserts defenses as articulated below.

15       3. **Legal Issues:** The Complaint in this case sets forth causes of action based on  
 16 Wrongful Death with Survival-Asbestos: Negligence and Products Liability.

17       J.R. CLARKSON generally claims that decedent was not exposed to asbestos-containing  
 18 products for which it is liable and asserts defenses based on government contractor, sophisticated  
 19 user/sophisticated intermediary, “state-of-the art” and causation. *See, e.g., Boyle v. United*  
 20 *Technologies Corp.*, 487 U.S. 500 (1988) and *Johnson v. American Standard, Inc.*, 43 Cal.4th 56  
 21 (2008). Defendant will also ask that damages be modified based on *Howell v. Hamilton Meats,*  
 22 *Inc.*, 52 Cal.4th 541 (Cal. 2011).

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25       <sup>1</sup> Plaintiffs have agreed to resolve their claims against, and filed requests for dismissals for, defendants A.W.  
 26 Chesterton Company; Crane Co.; Santa Fe Braun, Inc. as Successor-in-Interest to C.F. Braun, Inc. A. W. Chesterton  
 27 Company and Santa Fe Braun, Inc. as Successor-in-Interest to C. F. Braun, Inc. were dismissed. Docs. 23 and 18,  
 28 respectively. Plaintiffs still await approval of their request to dismiss Crane Co. Doc. 16. Plaintiffs resolved their  
 case with Crane Co. prior to serving their summons and complaint in the wrongful death matter and, as such, Crane  
 Co. has not answered or appeared in this case.

2       <sup>2</sup> Plaintiffs have requested a Default be entered against Paxton Products Corporation. Doc. 20.

1           **Issue 1: Whether Or Not Maritime Law Applies to Some of Plaintiffs' Claims**  
 2           **Against Defendant, Where Alleged Exposures to Asbestos are Associated**  
 3           **With Decedent's Presence Aboard Naval Vessels on Navigable**  
 4           **Waters**

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5           Plaintiffs contend that decedent was exposed to asbestos at various locations throughout  
 6           his career, including while aboard various military vessels at sea. Accordingly, there may be an  
 7           issue as to whether maritime law applies for some exposures in this case and, if so, the extent to  
 8           which it applies. *See, e.g., Conner v. Alfa Laval, Inc.*, 799 F. Supp. 2d 455 (E.D. Pa. 2011).

9           **Issue 2: Whether Defendant is Immune from Liability for Failure to Warn-Based**  
 10          **Claims Because of the Sophisticated User Defense Under *Johnson v.***  
 11          **American Standard, Inc., 43 Cal.4th 56 (Cal. 2008), or the Sophisticated**  
 12          **Intermediary Defense**

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13          Defendant contends that it is not liable to decedent for any failure to warn, as the Navy  
 14          was allegedly a sophisticated user of asbestos-containing products and defendant had no duty to  
 15          warn the Navy about any hazards associated with asbestos. Defendant further contends that  
 16          because it had no duty to warn the Navy, as a matter of law it owed no duty to warn the Navy's  
 17          employees of any hazards associated with the alleged exposure to asbestos from its products.

18          Defendant argues that a supplier has no duty to warn a purchaser about hazards the  
 19          purchaser knows or should reasonably be expected to know about. *Johnson, supra*, 43 Cal.4th  
 20          65 (2008). The basic principle of this defense - commonly called the "sophisticated user"  
 21          doctrine - is that when a manufacturer, distributor, seller or supplier provides a product to a  
 22          purchaser who is knowledgeable of the dangers of the product, there is no duty to warn either the  
 23          purchaser or the purchaser's employees of that danger. *See, e.g., McKay v. Rockwell Int'l Corp.*,  
 24          704 F.2d 444, 454 n. 14 (9th Cir. 1983); *In re Related Asbestos Cases*, 543 F. Supp. 1142, 1151  
 25          (N.D. Cal. 1982).

26          Plaintiffs maintain that this case does not involve a sophisticated user and, accordingly,  
 27          *Johnson* does not apply. Additionally, plaintiffs contend that, to the extent that defendant tries to  
 28          impart the Navy's alleged knowledge to plaintiffs, there is no sophisticated intermediary defense  
 29          available in an asbestos-related case under maritime law. *See, e.g., Mack v. General Electric*  
 30          *Co.*, 2012 U.S. Dist. LEXIS 143380 (E.D. Pa. Oct. 3, 2012). Nor would such a defense be

1 available under California law given the facts of this case. *See Webb v. Special Electric Co.,*  
 2 *Inc.*, 2016 Cal. LEXIS 3591 (Cal. May 23, 2016). Plaintiffs further contend that any such  
 3 defense based on purported sophistication, if available, would only apply to claims based on  
 4 failure to warn and would not be dispositive of plaintiffs' case. *Johnson v. Honeywell*  
 5 *International Inc.*, 179 Cal.App.4th 549 (Cal. Ct. App. 2009).

6           **Issue 3: Whether Defendant is Immune from Liability under the Government**  
 7           **Contractor Defense Articulated in *Boyle v. United Technologies Corp.* 487**  
              **U.S. 500 (1988)**

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8           Some asbestos defendants generally contend that they are not liable in products liability  
 9 because their products were designed and manufactured in strict compliance with military  
 10 specifications. *See, e.g., Boyle v. United Technologies Corp.*, 487 U.S. 500 (1988); *Fung v. Abex*  
 11 *Corp.*, 816 F. Supp. 569, 572 (N.D. Cal. 1992); *Faddish v. General Electric Co.*, No. 09-70626,  
 12 2010 WL 4166108 (E.D. Pa. Oct. 20, 2010).

13           For a number of reasons, plaintiffs maintain that the government contractor defense is  
 14 neither available to defendant here, nor does defendant meet the requirements of the government  
 15 contractor defense even it were available. *See, e.g., Boyle, supra*, 487 U.S. 500; *In re: Hawaii*  
 16 *Federal Asbestos Cases*, 960 F.2d 806, 813, (9th Cir. Haw. 1992).

17           **Issue 4: Whether Decedent was Exposed to Asbestos-Containing Products**  
 18           **Attributable to Defendant such that These Exposures Were a Substantial**  
              **Factor in Causing His Injuries**

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19           Plaintiffs' experts will testify that decedent's exposure to asbestos as a result of working  
 20 with and/or around products sold, supplied, distributed, incorporated, specified, installed,  
 21 applied, used and/or specified by defendant, or as a result of defendant's activities, was a  
 22 substantial factor in his asbestos-related diseases, including asbestosis and asbestos related  
 23 pleural disease. The California Supreme Court, in considering an action for asbestos-related  
 24 disease, specifically held that the "substantial factor" test is satisfied where a plaintiff show that  
 25 defendant's negligence or defective product, in reasonable medical probability, was a substantial  
 26 factor in contributing to the aggregate dose of asbestos that the decedent inhaled, and hence the  
 27 risk of developing an asbestos-related disease. *Rutherford v. Owens Illinois, Inc.*, 16 Cal.4th  
 28 953, 954 (Cal. 1997). Decedent's exposure to asbestos attributable to defendant also meets the

1 substantial factor standards articulated in *Lindstrom v. A-C Prod. Liab. Trust*, (6<sup>th</sup> Cir. 2005). 424  
 2 F.3d 488.

3 Defendant contends that plaintiffs will be unable to establish that its "asbestos-related  
 4 activities occurred with sufficient frequency and regularity in locations from which asbestos  
 5 fibers could have traveled to [decedent's] work area so that it was a reasonable medical  
 6 probability that the exposure to [defendant's] asbestos related activities was a substantial factor  
 7 in causing [plaintiffs'] injuries." *Hunter v. Pacific Mechanical Corp.*, 37 Cal.App.4th at 1289  
 8 (1995). *See also Lineweaver v. Plant Insulation Co.*, 31 Cal.App.4th 1409, 1415-1416 (1995).

9           **Issue 5: Whether *Howell v. Hamilton Meats, Inc.*, Supra, 52 Cal.4th 541, Applies to  
 10 the Determination of Damages in This Case**

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11           Defendant contends that plaintiffs' claims for past medical damages should be limited to  
 12 the amounts actually paid by, or on decedent's behalf, and not the amounts that were billed by  
 13 his medical providers. *Howell, supra*, 52 Cal.4th 541; *Bermudez v. Ciolek*, 237 Cal.App.4th  
 14 1311, 1330 (2015) [“the measure of medical damages is the lesser of (1) the amount paid or  
 15 incurred, and (2) the reasonable value of the services provided”]. Moreover, evidence of the  
 16 amounts *billed* for past medical services, as opposed to the amounts *paid*, is inadmissible to  
 17 support an expert opinion as to the value of future medical expenses, or to demonstrate or argue  
 18 the value of non-economic damages (e.g., pain and suffering or loss of consortium). *Corenbaum*  
 19 *v. Lampkin*, 215 Cal.App.4th 1308 (2013). J.R. CLARKSON also claims that damages for  
 20 wrongful death claims under Maritime Law do not include loss of society under *Miles v. Apex*  
 21 *Marine Corp.*, 498 U.S. 19 (1990).

22           Plaintiffs dispute the proper application of *Howell* and its progeny, and *Miles* to the facts  
 23 of this case, as well as defendant's reading of the case law.

24           4. **Motions:** Parties anticipate filing Motions for Summary Judgment and/or Motions for  
 25 Partial Summary Judgment before trial, as well as *motions in limine* at the time of trial.

26           5. **Amendment of Pleadings:** Plaintiffs amended the Complaint to add punitive  
 27 damages against a now dismissed defendant while the case was still in San Francisco Superior  
 28 Court. Parties do not intend to amend any pleading at this time.

1       6. **Evidence Preservation:** Because this action is in its infancy, it is too early to  
 2 determine if a document or information that is required for discovery has been destroyed or  
 3 altered significantly by a party. Parties acknowledge they should preserve all relevant evidence  
 4 tangible or otherwise necessary to the fair determination of the action or be subject to penalties  
 5 under appropriate codes.

6       7. **Disclosures:** Parties have or will timely serve their initial disclosures wherein they set  
 7 forth information, witnesses and documents that support their claims.

8       8. **Discovery:** In addition to serving initial disclosures, parties anticipate that discovery  
 9 is needed on various subjects including, but not limited to decedent's exposure to asbestos,  
 10 plaintiffs' damages and defendant's affirmative defenses including, but not limited to the  
 11 government contractor defense, the sophisticated intermediary/user defense and state of the art.

12       The parties anticipate that plaintiffs, defendant's Person(s) Most Knowledgeable and  
 13 Custodian(s) of Records, and other witnesses may be deposed and that both sides will propound  
 14 and respond to written discovery.

15       9. **Class Actions:** Not applicable.

16       10. **Related Cases:** Prior to his death, decedent and plaintiff Mary Kuntz filed a  
 17 personal injury case in the Eastern District of California (Case No. 2:19-CV-00752-JAM-EFB).  
 18 This case arose from the same or similar operative facts but involved different defendants. This  
 19 case was dismissed against all the named defendants.

20       Claims have been filed and are currently pending or have settled with the following  
 21 Bankruptcy Trusts: AcandS, Inc.; A.P. Green Industries, Inc.; Armstrong World Industries, Inc.;  
 22 Asarco Incorporated; Babcock & Wilcox Company; Burns & Roe Enterprises, Inc.; Combustion  
 23 Engineering, Inc.; Celotex; C E Thurston & Sons, Inc.; Eagle-Picher Industries, Inc.; Fibreboard  
 24 Corporation; The Flintkote Company; Flexitallic, Inc.; G-I Holdings, Inc.; Garlock Sealing  
 25 Technologies, LLC; General Motors Corporation; Halliburton Energy Services, Inc.; Kaiser  
 26 Aluminum & Chemical Corporation; Keene Corporation - Keene Creditors Trust; Leslie  
 27 Controls, Inc.; Manville Trust; North American Refractories Company; Owens Corning  
 28 Fiberglas; Pittsburgh Corning Corporation; Plant Insulation Company; Porter-Hayden Company;

1 Quigley Company, Inc.; Raymark Industries, Inc.; Shook & Fletcher Insulation; T&N, Ltd.;  
 2 United States Gypsum Company; Western MacArthur Company; and Yarway Corporation.

3       11. **Relief:** Plaintiffs will seek relief for all medical and related expenses according to  
 4 proof. Plaintiffs will also claim economic damages for plaintiffs' loss of home services and  
 5 income. These damages will be based on the calculations of plaintiffs' economic expert.  
 6 Ultimately, plaintiffs will claim economic damages according to proof at trial. Plaintiffs claim  
 7 non-economic damages in the amount of \$10,000,000.00. Plaintiffs further claim all recoverable  
 8 fees and costs.

9       Defendant maintains that *Howell, supra*, 52 Cal.4th 541, and its progeny cases (e.g.,  
 10 *Corenbaum, supra*, 215 Cal.App.4th 1308; *Bermudez, supra*, 237 Cal.App.4th 1311) are  
 11 controlling as to the issue of medical damages calculations. Again, plaintiffs disagree as to the  
 12 application of *Howell* and its progeny.

13       12. **Settlement and ADR:** As this is an asbestos-related case, parties stipulate to and  
 14 request an early settlement conference with Magistrate Judge Corley.

15       13. **Consent to Magistrate Judge For All Purposes:** Parties respectfully decline to  
 16 consent to a magistrate judge for all purposes.

17       14. **Other References:** This case is not suitable for reference to binding arbitration, a  
 18 special master, or the Judicial Panel on Multidistrict Litigation.

19       15. **Narrowing of Issues:** Parties are unable to narrow any issues at this time.

20       16. **Expedited Trial Procedure:** This is not a case that can be handled under the  
 21 Expedited Trial Procedure.

22       17. **Scheduling:** Parties propose and stipulate to the following scheduling order:

23           Deadline for completion of non-expert discovery: July 15, 2022

24           Deadline to file dispositive motions: August 15, 2022

25           Deadline to file responses to dispositive motions: September 6, 2022

26           Deadline to file replies (if any) to dispositive motions: September 20, 2022

27           Last date for hearing dispositive motions: October 14, 2022 at 9:00 am

28           Exchange of initial expert reports: November 18, 2022

1 Exchange of rebuttal expert reports: December 2, 2022

2 Deadline for completion of expert discovery: January 13, 2023

3 Pretrial conference: January 30, 2023, at 2:00 pm

4 Trial: February 27, 2023, at 8:00 am

5 18. **Trial:** This case will be tried to a jury. Plaintiffs anticipate that their case-in-chief  
6 will take approximately 15 full court days. Defendant estimates that its case will take 5 full court  
7 days. Anything less would be a denial of due process.

8 19. **Disclosure of Non-party Interested Entities or Persons:** Parties have filed  
9 Certification of Interested Entities or Persons with the Court.

10 20. **Professional Conduct:** All attorneys of record for the parties have or will have  
11 reviewed the Guidelines for Professional Conduct for the Northern District of California by the  
12 Case Management Conference.

13 21. **Such other matters as may facilitate the just, speedy and inexpensive disposition**  
14 **of this matter:** Not applicable.

15 Dated: December 28, 2021

BRAYTON♦PURCELL LLP

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25 **ATTESTATION OF CONCURRENCE IN FILING**

26 Pursuant to Local Rule 5-1(i)(3), the undersigned hereby attests that all of the signatories listed  
27 on the above document concur in, and have authorized, the filing of this document.

28 /s/ Kimberly J. Chu  
Kimberly J. Chu, Esq., S.B. #206817

## **CASE MANAGEMENT ORDER**

The above JOINT CASE MANAGEMENT STATEMENT & PROPOSED ORDER is approved as the Case Management Order for this case and all parties shall comply with its provisions. [In addition, the Court makes the further orders stated below:]

IT IS SO ORDERED.

Dated:

**UNITED STATES DISTRICT/MAGISTRATE JUDGE**

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